

## SENATE BILL No. 538

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 20-28-9-1.5; IC 20-29.

**Synopsis:** Teacher collective bargaining. Provides that the Indiana education employment relations board (board) must publish a model salary schedule that a school corporation may adopt. (Current law requires the department of education (department) to publish a model salary schedule.) Adds a definition of "professional employee organization". Provides that a school employer shall submit a copy of the affidavit submitted by the exclusive representative indicating the number of teachers who are members of the exclusive representative to the board. Provides that if the board determines that the affidavit indicates that the exclusive representative does not represent a majority of the employees, the board shall investigate the affidavit. Provides that after investigation by the board, the board may, if necessary, hold a hearing concerning representation by the school employee organization, and, based on the results of the hearing, direct an election by secret ballot within the bargaining unit to determine representation. Provides that an election based on the investigation of an affidavit may be held only once in a five year period. Removes requirements that a school corporation submit its local salary schedule to the department for posting on the department's Internet web site. Provides that the board must rule on an appeal of a factfinder's decision within 60 days of receipt of the notice of appeal. Provides that factfinding by a factfinder may not last longer than 30 days. Provides that the board shall appoint an individual or an ad hoc panel to review each collective bargaining agreement and make a recommendation regarding its compliance with collective bargaining requirements. Authorizes the board to take certain actions for collective bargaining agreements that

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**Effective:** July 1, 2015.

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January 14, 2015, read first time and referred to Committee on Pensions & Labor.

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do not comply with collective bargaining requirements. Provides that the public hearing for a collective bargaining impasse proceeding may begin not earlier than October 1 in the first year of the state budget biennium and must be concluded by February 1 of the year following the commencement of bargaining. Requires the board to develop and maintain a form summarizing a school employee's rights and protections. Requires a school corporation, beginning in the 2016-2017 school year, to distribute the form to the school corporation's employees. Requires a school corporation to establish and maintain procedures or policies that provide equal treatment of and equal access for professional employee organizations. Requires a bargaining unit to have an election before July 1, 2017, to certify an employee organization as an exclusive representative.



Introduced

First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## SENATE BILL No. 538

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A BILL FOR AN ACT to amend the Indiana Code concerning education.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 20-28-9-1.5, AS ADDED BY P.L.286-2013,  
2       SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2015]: Sec. 1.5. (a) This subsection applies to a contract in  
4       effect July 1, 2012, or upon the expiration of a contract in existence on  
5       July 1, 2011, whichever is earlier, and governs salary increases for a  
6       teacher employed by a school corporation on or after the date this  
7       subsection takes effect. Compensation attributable to additional  
8       degrees or graduate credits earned before the effective date of the local  
9       salary schedule created under this chapter shall continue.  
10      Compensation attributable to additional degrees for which a teacher has  
11      started course work before July 1, 2011, and completed course work  
12      before September 2, 2014, shall also continue.  
13      (b) Increases or increments in a local salary scale must be based  
14      upon a combination of the following factors:



(1) A combination of the following factors taken together may account for not more than thirty-three percent (33%) of the calculation used to determine a teacher's increase or increment:

(A) The number of years of a teacher's experience.

(B) The attainment of either:

(i) additional content area degrees beyond the requirements for employment; or

(ii) additional content area degrees and credit hours beyond the requirements for employment, if required under an agreement bargained under IC 20-29.

(2) The results of an evaluation conducted under IC 20-28-11.5.

(3) The assignment of instructional leadership roles, including the responsibility for conducting evaluations under IC 20-28-11.5.

(4) The academic needs of students in the school corporation.

(c) A teacher rated ineffective or improvement necessary under IC 20-28-11.5 may not receive any raise or increment for the following year if the teacher's employment contract is continued. The amount that would otherwise have been allocated for the salary increase of teachers rated ineffective or improvement necessary shall be allocated for compensation of all teachers rated effective and highly effective based on the criteria in subsection (b).

(d) A teacher who does not receive a raise or increment under subsection (c) may file a request with the superintendent or superintendent's designee not later than five (5) days after receiving notice that the teacher received a rating of ineffective. The teacher is entitled to a private conference with the superintendent or superintendent's designee.

(e) ~~Not later than January 31, 2012;~~ The ~~department~~ **Indiana education employment relations board** shall publish a model salary schedule that a school corporation may adopt.

(f) Each school corporation shall submit its local salary schedule to the ~~department~~ **Indiana education employment relations board**. The ~~department~~ **Indiana education employment relations board** shall publish the local salary schedules on the ~~department's~~ **Indiana education employment relations board's** Internet web site.

(g) The ~~department~~ **Indiana education employment relations board** shall report any noncompliance with this section to the state board.

(h) The state board shall take appropriate action to ensure compliance with this section.

(i) This chapter may not be construed to require or allow a school corporation to decrease the salary of any teacher below the salary the



1 teacher was earning on or before July 1, 2012, if that decrease would  
2 be made solely to conform to the new salary scale.

3 (j) After June 30, 2011, all rights, duties, or obligations established  
4 under IC 20-28-9-1 before its repeal are considered rights, duties, or  
5 obligations under this section.

6 SECTION 2. IC 20-29-2-11.5 IS ADDED TO THE INDIANA  
7 CODE AS A NEW SECTION TO READ AS FOLLOWS  
8 [EFFECTIVE JULY 1, 2015]: **Sec. 11.5. "Professional employee**  
9 **organization" means any one (1) or more organizations, agencies,**  
10 **committees, councils, or groups of any kind in which certificated**  
11 **employees participate, and that exist for the purpose, in whole or**  
12 **in part, of engaging in negotiations with a governing body**  
13 **regarding the terms and conditions of employment or for the**  
14 **purpose of providing professional development or liability**  
15 **protection to certificated employees.**

16 SECTION 3. IC 20-29-3-15 IS ADDED TO THE INDIANA CODE  
17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
18 1, 2015]: **Sec. 15. (a) Before July 30, 2015, the board shall develop**  
19 **and maintain a form that summarizes a school employee's rights**  
20 **and protections under IC 20-28 and IC 20-29. The form must be**  
21 **made available on the board's Internet web site.**

22 **(b) Beginning with the 2015-2016 school year, a school**  
23 **corporation shall distribute copies of the form developed and**  
24 **maintained under subsection (a) to the school corporation's school**  
25 **employees.**

26 SECTION 4. IC 20-29-4-4 IS ADDED TO THE INDIANA CODE  
27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
28 1, 2015]: **Sec. 4. (a) Except as provided in subsection (d), a school**  
29 **corporation shall establish and maintain procedures or policies**  
30 **that provide equal treatment of and equal access for professional**  
31 **employee organizations. A school corporation may not deny**  
32 **professional employee organizations equal access to school**  
33 **employees if a professional employee organization requests access**  
34 **to the same extent that access is granted to any other professional**  
35 **employee organization. A professional employee organization may**  
36 **not be granted the exclusive privilege of access to the use of school**  
37 **facilities for meetings, the use of bulletin boards in a school facility,**  
38 **or the use of school mail systems.**

39 **(b) A governing body may not grant access to any school**  
40 **employee's mailbox or electronic mail account to a professional**  
41 **employee organization without giving access to any other**  
42 **professional employee organization.**



1 (c) If a professional employee organization is permitted to  
 2 attend a school employee orientation meeting, then any other  
 3 professional employee organization that requests permission to  
 4 attend the meeting shall be granted permission.

5 (d) For purposes of subsection (a), access to school employees  
 6 includes the following:

7 (1) Setting up informational tables at inservice, orientation, or  
 8 other similar meetings.

9 (2) Speaking at inservice, orientation, or other similar  
 10 meetings.

11 (3) Distributing information by mail or electronic mail to  
 12 school employees.

13 (4) Using school corporation meeting rooms during nonwork  
 14 hours.

15 (5) Representing employment matters when requested by a  
 16 school employee.

17 (6) Sponsoring a school employee activity or event.

18 (e) The board may adopt rules under IC 4-22-2 necessary to  
 19 administer this section.

20 (f) The board is not bound by IC 4-21.5 in conducting any  
 21 hearings or findings relating to this section.

22 SECTION 5. IC 20-29-5-3, AS AMENDED BY P.L.1-2006,  
 23 SECTION 333, IS AMENDED TO READ AS FOLLOWS  
 24 [EFFECTIVE JULY 1, 2015]: Sec. 3. (a) If an exclusive school  
 25 employee organization is not determined under section 2 of this  
 26 chapter, the determination of whether a school employee organization  
 27 shall be the exclusive representative shall be determined under this  
 28 section.

29 (b) A school employee organization may file a petition asserting  
 30 that:

31 (1) twenty percent (20%) of the employees in an appropriate unit  
 32 wish to be represented for collective bargaining by the school  
 33 employee organization as exclusive representative; or

34 (2) the designated exclusive representative is no longer the  
 35 representative of the majority of school employees in the unit.

36 (c) The school employer may file a petition asserting:

37 (1) that one (1) or more school employee organizations have  
 38 presented to the school employer a claim to be recognized as the  
 39 exclusive representative in an appropriate unit; or

40 (2) that the school employer has good faith doubt that the  
 41 previously certified school employee organization represents a  
 42 majority of employees in the bargaining unit.



(d) Twenty percent (20%) of the school employees in a unit may file a petition asserting that the designated exclusive representative is no longer the representative of the majority of school employees in the unit.

**(e) If a copy of an affidavit sent to the board under section 7(f) of this chapter indicates that the school employee organization no longer represents a majority of the school employees in the unit, the board shall investigate the affidavit under subsection (f).**

~~(e)~~ **(f)** The board shall investigate a petition filed under subsection (b), (c), ~~or~~ (d), **or an affidavit described in subsection (e).** If the board has reasonable cause to believe that a question exists as to whether the designated exclusive representative or any school employee organization represents a majority of the school employees in a unit, the board shall provide for an appropriate hearing within thirty (30) days. In holding a hearing, the board is not required to comply with IC 4-21.5.

~~(f)~~ **(g)** If the board finds, based on the record of a hearing held under subsection ~~(e)~~, **(f)**, that a question of representation exists, the board shall direct an election by secret ballot in a unit the board determines to be appropriate.

~~(g)~~ **(h)** Certification as the exclusive representative may be granted only to a school employee organization that has been selected in a secret ballot election under subsection ~~(f)~~; **(g)**, by a majority of all the employees in an appropriate unit as their representative.

~~(h)~~ **(i)** An election described in subsection ~~(f)~~ **(g)** may not be held in a bargaining unit if a valid election has been held in the preceding:

**(1) twenty-four (24) month period, in response to a petition filed under subsection (b), (c), or (d); or**

**(2) five (5) year period, in response to an affidavit described in subsection (e).**

SECTION 6. IC 20-29-5-7, AS ADDED BY P.L.48-2011, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 7. (a) This section does not apply to the bargaining team for the exclusive representative.

(b) The percentage of teacher positions the exclusive representative may appoint to serve on a statutory or locally created district wide committee may not exceed the percentage of teachers in the school corporation who are members of the exclusive representative. If multiplying the number of teacher positions on the committee by the percentage of teachers in the school corporation who are members of the exclusive representative does not produce a whole number, the product must be rounded up to the nearest whole number. The



percentage of positions applies to the number of teacher positions on a committee and not to the total number of positions on a committee.

(c) The percentage of teacher positions the exclusive representative may appoint to serve on a statutory or locally created school wide committee may not exceed the percentage of teachers in the school who are members of the exclusive representative. If multiplying the number of teacher positions on the committee by the percentage of teachers in the school who are members of the exclusive representative does not produce a whole number, the product must be rounded up to the nearest whole number. The percentage of positions applies to the number of teacher positions on a committee and not to the total number of positions on a committee.

(d) A committee to which this section applies may not address subjects of bargaining under this article. A school employer's appointment of a teacher to a committee is not an unfair practice as it relates to the appointment of the teacher committee members.

(e) By September 15 of each school year, the local president or other officer or designee of the exclusive representative shall certify by affidavit to the school employer the number of teachers in each school and in the entire school corporation who are members of the exclusive representative.

**(f) By October 1 of each school year, the school employer shall provide the board with a copy of the affidavit submitted to the school board under subsection (e).**

SECTION 7. IC 20-29-6-15.1, AS ADDED BY P.L.229-2011, SECTION 181, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 15.1. (a) If an agreement has not been reached on the items permitted to be bargained collectively under section 4 of this chapter, within fifteen (15) days after mediation under section 13 of this chapter has ended, the board shall initiate factfinding.

(b) Factfinding must culminate in the factfinder imposing contract terms on the parties. The factfinder must select one (1) party's last best offer as the contract terms. The factfinder's order must be restricted to only those items permitted to be bargained and included in the collective bargaining agreement under section 4 of this chapter and must not put the employer in a position of deficit financing (as defined in IC 20-29-2-6). The factfinder's order may not impose terms beyond those proposed by the parties in their last, best offers.

(c) Costs for the factfinder shall be borne equally by the parties.

(d) Factfinding may not last longer than ~~fifteen (15)~~ **thirty (30)** days.

SECTION 8. IC 20-29-6-18, AS AMENDED BY P.L.6-2012,





SECTION 140, IS AMENDED TO READ AS FOLLOWS  
[EFFECTIVE JULY 1, 2015]: Sec. 18. (a) Either party may appeal the  
decision of the factfinder under IC 20-29-6-15.1. The appeal must be  
filed not later than thirty (30) days after receiving the factfinder's  
decision.

(b) The board's decision must be restricted to only those items  
permitted to be bargained and included in the collective bargaining  
agreement under section 4 of this chapter and must not put the  
employer in a position of deficit financing, as defined in IC 20-29-2-6.  
The board's decision may not impose terms beyond those proposed by  
the parties in their last, best offers.

(c) The board must rule on the appeal within ~~thirty (30)~~ **sixty (60)**  
days after receipt of notice of appeal.

SECTION 9. IC 20-29-6-20 IS ADDED TO THE INDIANA CODE  
AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
1, 2015]: Sec. 20. (a) **The board shall publish a rubric for collective  
bargaining agreements prior to each bargaining season.**

(b) **The board shall appoint an individual from its staff or an ad  
hoc panel to review each collective bargaining agreement and  
make a recommendation regarding the agreement's compliance  
with this chapter, and the appropriate remedy for any  
noncompliance. The review must occur during the duration of the  
collective bargaining agreement unless the review time frame is  
extended by the board for good cause.**

(c) **Within fifteen (15) days of the issuance of the  
recommendation, one (1) or both parties may appeal the decision  
in writing to the board.**

(d) **If no appeal is received by the board within fifteen (15) days  
of issuance of the recommendation, the recommendation shall  
become the final order of the board.**

(e) **If the recommendation is timely appealed, the board shall  
make a decision on the recommendation with or without oral  
argument. The board may request that the parties brief the issue.  
The board must rule on the appeal within thirty (30) days after the  
later of the following:**

- (1) **The receipt of the appeal.**
- (2) **The receipt of briefs.**
- (3) **The close of oral argument.**

(f) **IC 4-21.5 does not apply to a review under this section by the  
reviewer or the board.**

(g) **The remedies available to the board under this section  
include issuing an order that does one (1) or more of the following:**



(1) Orders the parties to cease and desist from noncompliance, indicating any areas of noncompliance.

(2) Provides that the board will appoint a member of its staff or an ad hoc panel prior to the bargaining season to monitor the parties and provide guidance regarding compliance.

(3) Prevents the parties from ratifying any subsequent collective bargaining agreements until the parties receive written permission from the board or its agent.

(4) Requires the parties to reimburse the board for the cost of the monitor. The amount shall be divided equally between the parties.

SECTION 10. IC 20-29-8-7, AS AMENDED BY P.L.229-2011, SECTION 183, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 7. (a) When a factfinder is requested or required under IC 20-29-6, the board shall appoint a factfinder from the staff or panel established under section 6 of this chapter.

(b) The factfinder shall make an investigation and hold hearings as the factfinder considers necessary in connection with a dispute.

(c) The factfinder:

(1) may restrict the factfinder's findings to those issues that the factfinder determines significant;

(2) must restrict the findings to the items listed in IC 20-29-6-4; and

(3) may not impose terms beyond those proposed by the parties in their last, best offers.

(d) The factfinder may use evidence furnished to the factfinder by:

(1) the parties;

(2) the board;

(3) the board's staff; or

(4) any other state agency.

(e) The factfinder shall conduct the factfinding hearing in public in a room or facility owned by the county or local unit of government located in the county in which the school employer is located, or if the school employer is located in more than one (1) county, in the county in which the greatest number of students who attend the school employer's schools reside. The public hearing may begin not earlier than October 1 in the first year of the state budget biennium and must be concluded by ~~December 31~~ **February 1** of the ~~same~~ year **following the commencement of bargaining.**

(f) The factfinding process may not exceed ~~fifteen (15)~~ **thirty (30)** days from beginning to end, and not more than two (2) of those days



may be used for public testimony, which may be taken at the discretion of the factfinder. During the public hearing, each party shall present fully its last, best offer, including the fiscal rationale for the offer. Only general operating funds and those funds certified by the department of education and the department of local government finance may be considered as a source of the funding for items, unless the school funding formula allows other funds to be used for certain items.

(g) The factfinder shall make a recommendation as to the settlement of the disputes over which the factfinder has jurisdiction.

(h) The factfinder shall:

(1) make the investigation, hearing, and findings as expeditiously as the circumstances permit; and

(2) deliver the findings to the parties and to the board.

(i) The board, after receiving the findings and recommendations, may make additional findings and recommendations to the parties based on information in:

(1) the report; or

(2) the board's own possession.

The board may not make any recommendations to the parties related to any items not specifically identified in IC 20-29-6-4.

(j) At any time within five (5) days after the findings and recommendations are delivered to the board, the board may make the findings and recommendations of the factfinder and the board's additional findings and recommendations, if any, available to the public through news media and other means the board considers effective.

(k) The board shall make the findings and recommendations described in subsection (j) available to the public not later than ten (10) days after the findings and recommendations are delivered to the board.

**SECTION 11. [EFFECTIVE JULY 1, 2015] (a) The definitions in IC 20-18-2 and IC 20-29-2 apply throughout this SECTION.**

**(b) Notwithstanding IC 20-29-5-3, as amended by this act, before July 1, 2017, each unit (as defined in IC 20-29-5-1(a)) is required to have an election described in IC 20-29-5-3(g), as amended by this act, in a manner prescribed by the board.**

**(c) Certification as the exclusive representative may be granted only to a school employee organization that has been selected in a secret ballot election under subsection (b) by a majority of all employees in an appropriate unit as their representative.**

**(d) This SECTION expires July 1, 2018.**

